PACIFIC & ORIENT INSURANCE CO. SDN. BHD.

v.

LEE YIN SIONG & ANOR.

HIGH COURT MALAYA, IPOH
AJAIB SINGH J
[CIVIL APPEAL NO. 23 OF 1978]
24 MAY 1982

INSURANCE: *Third party risks - Compulsory insurance - Death or bodily injury to third party - Liability of insurers on judgment against driver of motor vehicle - Whether insurers obliged to satisfy judgment for property damage.*

On 1 October 1975 the first respondent's car was involved in a motor accident with another car driven by one Lee Kok Kong with the permission of its owner Ng Ah Lek. The first respondent's car was damaged and his wife the 2nd respondent who was seated in front sustained minor injuries. The appellants who were insurers of the car belonging to Ng Ah Lek at the material time informed the respondents that they had repudiated liability as their insured had committed a breach of policy condition and were not prepared to consider any claim in respect of any damage to the car but were however willing to consider any claim in respect of bodily injuries. As negotiations proved fruitless, the respondents filed an action in Court against Lee Kok Kong and on 6 October 1976 obtained judgment for the sum of RM2,446.75 being the amount incurred for the repairs to the 2nd respondent's car and a further sum of RM20 as damages for the 2nd respondent's injuries. The respondents then filed an action in Court against the appellants whereby they sought to enforce the judgment sum of RM2,446.75 under s. 80(1) of the Road Traffic Ordinance. On 12 April 1978, the learned Magistrate gave judgment against the appellants for the claim and costs. Hence this appeal.

Held:

[1] Under s. 80(1) of the Road Traffic Ordinance insurers are obliged to satisfy a judgment which a third party obtains against the person insured and this includes an authorised driver within the terms of the policy. But such a judgment must be a judgment in respect of a liability as is required to be covered by a policy under s. 75(1)(b) of the Ordinance and the liability under this subsection is in respect only of the death of or bodily injury to a third person.

[2] The judgment sum of RM2,446.75 which the respondents obtained against the appellants' insured's driver was not in respect of the death of or bodily injury to a third person. It fell outside the scope of s. 80(1) and therefore the appellants owed no duty under this section to satisfy the judgment.

[3] The learned Magistrate's interpretation and application of ss. 75(3) and 80(1) of the Road Traffic Ordinance was wholly erroneous.

[Appeal allowed with costs.]

Case referred to:
Tattersall v. Dyrsdale [1935] 2 KB 174

Legislation referred to:
Insurance Act 1963, s. 40
Road Traffic Act 1930 [UK], s. 36(4)
Road Traffic Ordinance 1958, ss. 75(1)(b), (3), (4), 80(1)

Other sources referred to:
Halsbury's Laws of England, 4th Edn., Vol. 25, para. 748

For the appellants - R.K. Nathan; M/s. R.K. Nathan & Co.
For the respondents - Raj; M/s. Kean Chye & Sivalingam

JUDGMENT

Ajaib Singh J:

Part IV of the Road Traffic Ordinance 1958 which has ss. 74 to 90 and which provides for compulsory insurance against third party risks applies only to death or bodily injury and not to property damage. This means that insurers are not obliged under s. 80(1) of the Ordinance to satisfy any Judgment in respect of property damage because such a Judgment is not a judgment in respect of any such liability as is required to be covered by a policy of insurance under s. 75(1)(b) of the Road Traffic Ordinance. Section 75(1)(b) and s. 80(1) read as follows:

> 75(1) In order to comply with the requirements of this Part of this Ordinance a policy of insurance must be a policy which:
>
> (a) ...
>
> (b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle or land implement drawn thereby on a road.
>
> 80(1) If, after a certificate of insurance has been delivered under subsection (4) of s. 75 of this Ordinance to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under para. (b) of subsection (1) of s. 75 of this Ordinance (being a liability covered by the terms of the policy) is given against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgments.

On 1 October 1975 the first respondent met with a motor accident while driving his car. The other car involved was driven by one Lee Kok Kong with the permission of its owner named Ng Ah Lek. As a result of the accident the first respondent's car was damaged and his wife the second respondent who was in the front passenger seat received some minor injuries. The appellants who had issued a policy of insurance against third party risks to Ng Ah Lek in respect of his car informed the respondents that they had repudiated liability on the ground that the insured had committed a breach of a condition in the policy. They were prepared however to consider any claim for damages in respect of bodily injuries but not in respect of any damage to the car.

Negotiations proved fruitless and the respondents went ahead with their action which they had commenced against Lee Kok Kong in the Magistrate's Court. On 6 October 1976 they obtained judgment against Lee Kok Kong for the sum of RM2,446.75 which was the amount incurred for the repairs to the first respondent's car and for a further sum of RM20 as damages for the injuries sustained by the second respondent. The respondents then filed an action against the appellants in the Magistrate's Court whereby they sought to enforce the judgment

in the sum of RM2,446.75 under s. 80(1) of the Road Traffic Ordinance and on 12 April 1978 the learned Magistrate gave judgment in favour of the respondents for the sum claimed and costs. This was the subject-matter of the present appeal before me.

The policy of insurance in this case covered third party risks only. Section II to the extent to which it is relevant in this case is in the following terms:

> Section II - Liability to third parties
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> 1. The company will subject to the limits of liability indemnify the insured in the event of accident caused by or arising out of the use of the motor vehicle against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of
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> (a) death of or bodily injury to any person except where such death or injury arises out of and in the course of the employment of such person by the insured and excluding liability to any person being a member of the insured's household who is a passenger in the motor vehicle unless such person is being carried by reason of or in pursuance of a contract of employment.
>
> (b) damage to property other than property belonging to the insured or held in trust by or in the custody or control of the insured or any member of the insured's household.
>
> 2. In terms of and subject to the limitations of and for the purposes of this section the company will indemnify any authorised driver who is driving the motor vehicle provided that such authorised driver
>
> (i) shall as though he were the insured observe fulfil and be subject to the terms of the policy insofar as they can apply
>
> (ii) is not entitled to indemnity under any other policy.

A policy of insurance in respect of a motor vehicle in the usual form either as a comprehensive policy or as only to the third party risks is a contractual agreement between the parties and by the application of the ordinary common law rule of privity of contract outsiders have no rights or obligations under the policy. Section 80(1) of the Road Traffic Ordinance is a statutory exception to the rule of privity of contract and it is designed to give effect to the protection intended by the legislature to third parties who through the negligence of others are killed or injured in motor accidents. Under s. 80(1) insurers are obliged to satisfy a judgment which a third party obtains against the person insured and this includes an authorised driver within the terms of the policy. But such a judgment must be a judgment in respect of a liability as is required to be covered by a policy under s. 75(1)(b) of the Ordinance and the liability under this subsection is in respect only of the death of or bodily injury to a third person. The judgment which the respondents obtained against Lee Kok Kong for the sum of RM2,446.75 was not in respect of the death of or bodily injury to a third person. It fell outside the scope of s. 80(1) and therefore the appellants owed no duty under this section to satisfy the judgment.

In his grounds of judgment the learned Magistrate referred to s. 75(3) of the Road Traffic Ordinance which reads as follows:

> 75(3) Notwithstanding anything in any written law a person issuing a policy of insurance under this section shall be liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons.

The learned Magistrate was of the view that the words "notwithstanding anything in any written law" in s. 75(3) meant that notwithstanding s. 75(1)(b), which requires compulsory insurance in respect of death or bodily injury to third parties, s. 75(3) provides for cover in respect of property damage as well and that because the scheme of Part IV of the Ordinance is to provide against third party risks a judgment obtained by a third party in respect of property damage has to be satisfied by the insurers under s. 80(1) of the Ordinance.

With respect this is a wholly erroneous interpretation and application of ss. 75(3) and 80(1) of the Road Traffic Ordinance. There are three points to note here. First while it cannot be denied that Part IV is intended to provide against third party risks compulsory insurance which is required to be taken under Part IV is meant to cover the lives and limbs of third parties but not their properties. Section 75 (3) refers clearly to policies issued under s. 75 and this section requires cover in respect only of death or bodily injury. Any judgment obtained by a third party in respect of property damage therefore cannot be enforced against the insurers under s. 80(1).

Secondly under s. 75(3) a policy issued under s. 75(1) may be extended rendering the insurers liable to indemnify persons or classes of persons specified in the policy that is to say persons other than the person insured under the policy. And although these persons or classes of persons are not named and are not parties to the policy of insurance they have by virtue of s. 75(3) a direct right of action for indemnity against the insurers. This is another statutory inroad into the rule of privity of contract but it should be noted here that these persons or classes of persons have to take the policy of insurance as they find it when they claim indemnity. See *Halsbury's Laws of England*, 4th Edn., Vol. 25, para. 748 and the case cited therein. Paragraph 748 reads as follows:

> A permitted driver is not directly a party to the original contract of insurance and on ordinary common law principles of contract law he cannot have any right of action against the insurers on the policy unless it is possible to show that the assured, when making the contract, intended to act as agent or trustee of the permitted driver. Frequently this is not possible because the particular permitted driver was not, at that time, in contemplation at all. It is, however, laid down by statute that if insurers issue a motor policy covering compulsorily insurable risks, they are liable to indemnity any persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons. The permitted driver accordingly has a direct right of action within the ambit of this provision against the insurers. In effect he becomes a party to the contract of insurance, but he must take the contract as he finds it; he cannot excuse a breach of a condition by pleading that he was unaware of its terms or existence.

In the present case the policy issued to the owner of the car Ng Ah Lek was extended under s. 75(3) to Lee Kok Kong who was the authorised driver of the car at the time of the accident. So if the respondents execute their judgment of 6 October 1976 personally against Lee Kok Kong the latter can it turn claim indemnity against the appellants. But if at the time of claiming indemnity the insurers had legitimately repudiated liability on the ground that the insured Ng Ah Lek had committed a breach of a condition precedent in the policy then Lee Kok Kong cannot claim indemnity against the appellants for he will have to take the policy as he finds it at the time of claiming indemnity.

The third point to note is that if not for the opening words in s. 75(3) of the Road Traffic Ordinance an extension clause to cover persons or classes of persons other than the insured person himself is void under s. 40 of the Insurance Act 1963 (Revised 1972) unless the person insured has an insurable interest in the lives of the persons or classes of persons who are

given the right of indemnity against the insurers under s. 75(3) of the Ordinance. In the case of *Tattersall v. Dyrsdale* [1935] 2 KB 174, the Court considered s. 36(4) of the Road Traffic Act 1930 which is in *pari materia* with s. 75(3) of our Road Traffic Ordinance 1958 and it was held by Goddard J (as he then was) that:

> upon the true construction of the section, the insurers were freed from the requirements of the Life Assurance Act 1774, as to insurable interest and the presence in the policy of the name of the assured, and that the insurers were legally bound to indemnify all `persons or classes of persons' referred to in the policy, whether parties to the contract of insurance or not.

In the circumstances therefore and for the reasons stated I allowed the appeal with costs.

Also found at [1983] 1 CLJ 91